IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-9-2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.Nos.28488 and 28551 of 2007
and
M.P.Nos.1 to 3 & 5 of 2007 in WP No.28551/2007
and
M.P.Nos.1 and 2 of 2007 in WP No.28488 of 2007

WP No.28488 of 2007:

A.Appasamy
Trustee
Vallivalam Desikar Educational Trust
Pannai Illam, Vallivalam Village
Thirukuvalai Taluk,
Nagapattinam District .. Petitioner

vs

The District Registrar
Nagapattinam .. Respondent

WP No.28551 of 2007:

A.Manaazhagan
Managing Trustee
Valivalam Desikar Educational Trust
Bungalow Street, Valivalam & Post
Thirukuvallai Taluk,
Nagapattinam District .. Petitioner

vs

1.The Inspector General of Registration
120, Santhome High Road
Santhome, Chennai 4.
2.The Director of Technical Education
Guindy, Chennai 25.
3.The Sub Registrar
Thiruvarur, Thiruvarur District
4.A.Appaswamy
5.M.Anbarasi
6.M.Madhuramangai
(RR5 & 6 impleaded as per order of
the Court in MP No.4/2007 in WP.28551/07
dated 19-9-2007) .. Respondents

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WP No.28488 of 2007 filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the respondent ending with proceedings No.Nil dated 24.8.2007 and quash the same.

WP No.28551 of 2007 filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the first respondent and the District Registrar, Nagapattinam, to furnish the report submitted by the District Registrar, Nagapattinam, on the basis of the enquiry made pursuant to the notice dated 24.8.2007 to the petitioner and quash the same (prayer amended as per order dt.19.9.07 and made in MP.6/07 in WP.No.28551/07)

For Petitioner in
WP 28488/2007 : Mr.Muthukumarasamy
Senior Counsel
for Mr.G.R.M.Palaniappan

For Petitioner in
WP 28551/2007 : Ms.G.Thilakavathi

For Respondents : Mr.V.Arun
Additional Government
Pleader for respondent
in WP 28488/2007 and
for RR1 to 3 in
WP 28551/2007

Mr.Muthukumarasamy
Senior Counsel
for Mr.G.R.M.Palaniappan
for R4 in WP 28551/2007

Mr.V.Raghavachari
for RR5 and 6 in
WP 28551/2007

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COMMON ORDER

This order shall govern these two writ petitions in WP Nos.28488 of 2007 and 28551 of 2007.

2.The Court heard the learned Counsel on either side. The affidavits along with the grounds in respect of the writ petitions are perused.

3.WP No.28488/2007 has been brought forth seeking a writ of certiorari to quash a notice issued by the respondent District Registrar, Nagapattinam, dated 24.8.2007, while WP No.28551/2007 is brought forth originally seeking a writ of certiorari to quash the entire records culminating to the filing of the amendment deed dated 16.8.2007, under

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Document No.336/2007 registered on 16.8.2007, on the file of the third respondent.

4.The case of the petitioner in WP 28488/2007 in short is that the petitioner is a Trustee of Vallivalam Desikar Educational Trust; that he had executed a deed of amendment to the declaration of the Trust on 16.8.2007; that the document was registered on the file of the Sub Registrar, Thiruvarur, on the very day, as document No.336/07; that the said document was registered only after the Officer satisfying himself as to whether the provisions of the Registration Act had been strictly complied with, and made an endorsement thereon, and thus, the registration has become completed; that the document has also been handed over; that while the matter stood thus, the impugned notice was issued by the District Registrar on 24.8.2007 stating that the petitioner should appear before the Sub Registrar, Thiruvarur, pursuant to a protest petition given, and challenging the same, this writ petition has been brought forth.

5.As regards WP No.28551/2007, the case of the petitioner therein in short is that the petitioner is the Managing Trustee of M/s.Valivalam Desikar Educational Trust; that it came into existence by way of a registered document; that the Trust was established by Manaithunai Natha Desikar; that the petitioner is the grandson; that by a registered Will in the year 1965, the said Desikar appointed his daughter Kannagammal as the Trustee after his life time; that Kannagammal who succeeded to his interest as Trustee, nominated the petitioner as the Managing Trustee for the Trust to succeed to the interest of the Trust; that the nomination was declared by a deed of declaration on 25.8.2003 which was registered before the Sub Registrar, Thiruvarur, and thus, he has been effectively functioning as the sole Managing Trustee; that the Trust is running a Polytechnic College, known as Valivalam Desikar Polytechnic College, Nagapattinam, which is also a Society registered under the Act; that the members were nominated by the Founder Trustee; that through the Governing Council of Society, the administration of the College was made; that the petitioner is made as Chairman for life time; that following the death of the mother of the petitioner, now he is in control and management of the affairs of the institutions; that while the matter stood thus, the fourth respondent has presented a document before the third respondent, the Sub Registrar, Thiruvarur, seeking an amendment of the Trust Deed and suppressing all the necessary material facts; that the facts mentioned by him in the document, are thoroughly false; but, the document has also been registered; that the fourth respondent having been removed as the Chairman of the sole trustee by a letter dated 11.9.2003, has already instituted a suit in O.S.No.410/2004 on the file of the District Munsif's Court, Nagapattinam; that the same is pending; that the fourth respondent is making attempts to usurp the administration of the Polytechnic which is the subject matter of the pending proceedings; that all these matters have been suppressed by him when the document for amendment of the trust deed was submitted by him, on 16.8.2007; that under such circumstances, the petitioner gave a protest petition before the District Registrar, and it is also pending; and that in view of the same, the entire document and the registration thereof have got to be quashed by issuance of a writ of certiorari.

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6.When WP No.28551/2007 is pending, the petitioner has taken MP No.6 of 2007 seeking an amendment of the prayer in the writ petition, whereby he seeks a writ of mandamus to direct the first respondent and the District Registrar, Nagapattinam, to furnish the report submitted by the District Registrar, Nagapattinam, on the basis of the enquiry made pursuant to the notice dated 24.8.2007, to the petitioner. That amendment has also been ordered.

7.In support of WP No.28488/2007, the learned Senior Counsel Mr.Muthukumarasamy, appearing for the petitioner, would submit that the impugned notice has got to be quashed since it was made without any legal sanction; that it is an admitted position that the document was placed, and only on being satisfied, the document has been registered by the Sub Registrar; that while the matter stood thus, the District Registrar has no power or jurisdiction either to summon or to conduct an enquiry on the document, which has already been registered, and under the circumstances, that notice has got to be quashed.

8.The learned Additional Government Pleader for the respondent namely the District Registrar, would submit that the powers vested under Sec.68 of the Registration Act is wide; that only in exercise of the powers, the notice under challenge has been issued; that while there were suppressions made in the document filed for registration, those powers could be exercised by the Registrar to summon, conduct enquiry and proceed accordingly, and hence, the writ petition has got to be dismissed.

9.The learned Counsel appearing for the writ petitioner in WP No.28551/2007, would submit that in the instant case, the document was placed by the fourth respondent for making an amendment in the Trust Deed, but suppressing all the necessary facts; that if those facts were brought to the notice of the Sub Registrar, the document would not have been registered; that after coming to know about the same, a protest petition was placed by the petitioner herein before the District Registrar; that the District Registrar, in view of the powers given under Sec.68 of the Act, has issued the impugned notice; that apart from that, the powers are available to him to proceed against the suppression of facts which led to the registration; that he has also got powers even to prosecute the persons and impose penalty as one envisaged under Sec.82 of the Act; that though he could not punish, in view of the powers available under Sec.82 of the Act, it has got to be rightly invoked; that for that purpose, now, the amendment is sought for for filing the report of the District Registrar after the enquiry is made, before the first respondent, the Inspector General of Registration, in order to exercise his powers under Sec.82 of the Act, and hence, a writ has got to be issued.

10.The Court paid its anxious consideration on the submissions made. Both the writ petitions for disposal require a short order.

11.It is not in controversy that a Deed of amendment was placed before the Sub Registrar, Nagapattinam, on 16.8.2007. The document has been registered and also on completion of the registration, the document has been handed over to the petitioner in WP No.28488/2007. While the matter stood thus, the impugned notice calling that petitioner to appear before the District Registrar, the respondent therein, has been issued on 24.8.2007, which is the subject matter of challenge in that writ petition.

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According to the learned Additional Government Pleader, the notice has been issued pursuant to the powers given to the Registrar under Sec.68 of the Registration Act. It would be more apt and appropriate to reproduce Section 68 Sub Section (2) of the Registration Act, 1908, as follows:

> "68(2): Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered."

12.The very reading of the above provision would clearly reveal that the legislative intent was only to empower the Registrar to issue directions to the Sub-Registrar in respect of the ministerial functions and duties. Now, what has been done is a notice issued by the District Registrar, calling upon the party to appear before the Sub Registrar pursuant to a protest petition in respect of a document which was placed for registration and registered also. In the instant case, only being satisfied, the Sub Registrar could have registered the document. Now, the act of registration is complete. A reading of the above provision would clearly reveal that no powers are vested with the Registrar to summon a party to explain about a document already registered, and whether the act of registration is complete. This provision is only intended for exercising the powers of the Registrar over his subordinates namely the Sub-Registrar, in respect of the ministerial functions and duties. It does not contemplate anything to be done to call for or summon a party to a document either for an enquiry or otherwise. Thus, it would be quite clear that the notice what has been issued by the Registrar under challenge, is one without a sanction of law, and hence, it has got to be quashed.

13.The other writ petition in WP No.28551/2007 has been brought forth originally for quashing the document by which the original trust deed was amended. If the petitioner therein is aggrieved by such an amendment, this is not the forum before which he could approach. The petitioner if really aggrieved, must approach the Court of civil law for appropriate remedy. It is a case where an effective and appropriate remedy is available. Hence, the petitioner has to approach the Court of civil law since that is the only forum before which he could approach, and it is not within the ambit of writ jurisdiction of this Court. In such circumstances, WP No.28551/2007 has got to be dismissed.

14.The petitioner has sought for amendment of the prayer in WP No.28551/2007. By that amendment, he seeks for furnishing a copy of the report submitted by the District Registrar, Nagapattinam, on the basis of the enquiry made pursuant to the notice dated 24.8.2007, to the first respondent. Now, at this juncture, it is pertinent to point out that even the earliest notice dated 24.8.2007, itself is quashed as above. In such circumstances, there is no question of further enquiry or facing the same before the first respondent, or a report thereon or giving a copy to the petitioner that would arise. Hence, WP No.28551/2007 automatically comes to an end. At the same time, the observations made by this Court, will not impede the petitioner taking appropriate remedy before the appropriate forum if so advised.

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15.Accordingly, WP No.28488/2007 is allowed quashing the notice of the respondent dated 24.8.2007. WP No.28551/2007 is dismissed. No costs. Consequently, connected MPs are closed.

nsv/

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Inspector General of Registration
120, Santhome High Road
Santhome, Chennai 4.

2.The Director of Technical Education
Guindy, Chennai 25.

3.The Sub Registrar
Thiruvarur, Thiruvarur District.

4.The District Registrar
Nagapattinam.

+2 ccs to M/s.G.R.M.Palaniappan, Advocate Sr.Nos.58358,58359.

+1 cc to M/s.G.Thilakavathi, Advocate Sr.No.58421.

+1 cc to M/s.V.Raghavachari, Advocate Sr.No.58406.

+2 ccs to Government pleader Sr.No.58593,58597.

AD(CO)
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